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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/484,928    06/07/95    MICHELSON

G    F-12509

EXAMINER

QM32/0606

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SUITE 300  
CHANTILLY VA 20151-1101

RECEIVED  
ART UNIT 1

PAPER NUMBER

19

3764  
DATE MAILED:

06/06/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/484,928

Applicant(s)

Gary K. Michelson

Examiner

Michael Brown

Group Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-26, 28-51, 53-75, 77-82, 85-96, 98, 101-132 and 135-172 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-24, 26, 28-50, 53-74, 77-82, 85-96, 98, 101-122, 124-129, 131-135 and 137-172 is/are rejected.
- ☒ Claim(s) 25, 51, 75, 123, 130 and 136 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit: 3764

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 5-7, 9-10, 17-22, 26-32, 34-35, 42-48, 53-57, 59-60, 67-72, 77-82, 89-94, 98-105, 107-108, 115-120, 124-126 and 131-132, 137,-138, 145 and 158-167 are rejected under 35 U.S.C. 103 as being obvious over Kuslich '638 in view of Kuslich '638.

Kuslich discloses in figure 2 a spinal implant, substantially as claimed. Kuslich teaches in figure 15 a frustoonical shaped implant. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the implant as disclosed by Kuslich could be fabricated in a frustoconical shape in order to allow the tapered leading end to be easily inserted into the vertebrae.

3. Claims 8, 13, 33, 38, 58, 63, 80, 85, 106, 111, 128, 134, 141, 142, 148 and 168 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '638 along with Ray.

Kuslich discloses in figure 2 a spinal implant, substantially as claimed. Kuslich teaches in figure 15 a frustoconical shaped implant. Ray '260 teaches a spinal implant comprising a

Art Unit: 3764

bioabsorbable material and a bone engaging means that is mesh-like. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the implant as disclosed by Kuslich could be fabricated of bioabsorbable material and with a bone engaging means as taught by Ray. The bioabsorbable material would allow the implant to absorb into the vertebrae. The mesh material would enhance bone growth on the outer surface of the implant.

4. Claims 11, 14-16, 23-24, 36, 39-41, 49-50, 61, 64-66, 73-74, 83-84, 86-88, 95-96, 109, 112-114, 121-122, 127, 129, 133, 135, 139-140, 143-144, 146-147, 149-151, 153-157 and 169-172 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '63, along with Brantigan '915.

Kuslich discloses in figure 2 a spinal implant, substantially as claimed. Kuslich teaches in figure 15 a frustoconical spinal implant, substantially as claimed. Brantigan '915 teaches a spinal implant comprising a bone engaging means that includes post (32c,32d), surface roughening that include knurling (fig. 6) and wells (the spaces between the post). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the spinal implant as disclosed by Kuslich could be fabricated with wells, posts, knurling or roughenings as taught by Brantigan in order to use these elements to enhance bone growth onto and inside of the impant.

5. Claims 25, 51, 75, 123, 130 and 136 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3764

*Conclusion*

Any inquiry concerning this communication should be directed to Michael Brown at  
telephone number (703) 308-2682.

M. Brown  
5 June 2000

A handwritten signature in black ink that reads "Michael A. Brown". The signature is written in a cursive style with a long horizontal stroke at the end.

**Michael A. Brown**  
**Primary Examiner**